

No. 21003

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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PASADENA INVESTMENT COMPANY and WILLIAM J.  
CLARK,

*Appellants,*

*vs.*

MARGUERITE J. WEAVER,

*Appellee.*

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APPELLANTS' REPLY BRIEF.

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FILED

McLAUGHLIN & McLAUGHLIN,

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650 South Spring Street,

Los Angeles, Calif. 90014,

WM. B. LUCK CLERK

*Attorneys for Appellants, Pasadena Invest-  
ment Co. and William J. Clark.*

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## APPELLANTS' REPLY BRIEF.

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### Statement With Respect to Appellee's Brief.

In Appellants' Opening Brief, the points, regarding both the lack of the jurisdiction of the Referee to proceed summarily and the lack of the District Court to proceed and make any adjudication whatsoever regarding a lien, such as Appellants' trust deed in a Chapter 11 proceedings, were clearly dealt with.

In spite of this, Appellee persists in her argument that Appellants waived their right to object to the Referee proceeding summarily to determine the validity of the trust deed lien involved. The authorities and the Federal Rules of Civil Procedure were quoted by Appellants to the contrary. Additionally, Appellants went forward and dealt with the general lack of jurisdiction

of the court in a Chapter 11 proceedings to adjudicate liens, citing numerous decisions as well as the statutory limitations which exist with respect thereto.

Nevertheless, Appellee continues to present the same arguments which were presented at the hearing before the Referee. As an example of Appellee's persistence in arguing points which have not even been presented on the Certificate of Review to the District Court or on this appeal, we find Appellee still urging that Appellants had argued that the Probate Court had exclusive jurisdiction of the property after Mr. Weaver Sr.'s demise. The record before Referee Franson indicates that there was some argument to this effect which the Referee properly rejected. Since then, this point has never been urged by Appellants, and, yet, we find Appellee suggesting that it is one of the issues still involved in the case, in spite of the disclaimer contained in Appellants Opening Brief to the contrary.

The first question was whether Appellants had made appropriate objections to the Referee's exercise of summary jurisdiction so as not to have waived the power of the Referee to proceed summarily. The next question was whether the United States District Court had any jurisdiction in a Chapter 11 proceeding to invalidate a trust deed lien held by Appellants on the real property. In the treatment of this last point, Appellee's counsel completely ignores the statutory limitation upon jurisdiction of the Bankruptcy Court as fully and

to the same effect as though there was no distinction between a Chapter 11 arrangement proceeding and any other type of bankruptcy proceeding.

The most that Appellee's brief constitutes is an invitation for us to go back and retrace our steps throughout the arguments made in Appellants' Opening Brief and repeat them. We do not believe that Appellants' Opening Brief, which was filed in this case, is so lacking in clarity and so unsupported by authorities as to merit any such repetitious conduct. We believe that the authorities cited in Appellants' Opening Brief are concise and to the point, and rather than attempt any repetition of these arguments, we believe that we should rest our case upon Appellants' Opening Brief as filed. We are still awaiting a direct response from Appellee's counsel to the authorities which we have cited therein and upon which we rely.

### **Conclusion.**

In concluding this matter, we believe that to the extent that Appellee has any rights meriting protection, there are suitable tribunals in which she can obtain such relief and in which appropriate pleadings can form the issues in a manner in which they can be squarely and fairly presented for determination. Under all of these circumstances, we believe that the decision of the District Court upholding its power and jurisdiction in a proceeding for an arrangement under Chapter 11 to

nullify a contract lien, such as a deed of trust, is erroneous, and that the express statutory limitations, with respect to arrangements and proceedings under Chapter 11, should not be disturbed on any possible basis that the interests of expediency might warrant the same.

Respectfully submitted,

McLAUGHLIN & McLAUGHLIN,

By JAMES A. McLAUGHLIN,

*Attorneys for Appellants, Pasadena Investment Co. and William J. Clark.*



### **Certificate.**

I certify that in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those Rules.

JAMES A. McLAUGHLIN